

made the deed. The charge of collusion with Griffith to give him or his firm an unlawful preference, is expressly denied.

I should, therefore, hold that the plaintiff had failed in his case if Griffith had been a creditor of Clark, and the deed had been executed to secure the debt. But this is not the character of the transaction at all. The answers of both the defendants charge that the property was sold by Clark to Griffith; and the deposition of Samuel Kramer, one of the firm of Kramer, Mantz & Company, taken under the commission, fully sustains the answers. It is not material to inquire into the validity of the original agreement proved by Kramer, that when the firm trusted Clark to the extent to which they gave him credit it was upon his promise to let them have the house; because if the subsequent agreement with Griffith to sell it to him, and the sale actually made to him, was *bona fide*, as both defendants swear was the case, and as Kramer proves, the character of the original agreement between Clark and the firm is of no importance. Certainly the *bona fides* of the sale and conveyance to Griffith cannot be impeached because of the mode in which the purchase-money was paid. Clark was indebted to the firm and the firm was indebted to Griffith, and upon receiving the conveyance it was agreed that the purchase-money, \$1300, should be charged to Griffith upon the books of the firm and credited to Clark, and this was done and so stands to the present time. The money of Griffith, therefore, in the hands of the firm, where there is no pretence it was not perfectly safe, was applied to the payment of Clark's indebtedness. It was, therefore, with his consent paid to his use, and is precisely the same thing in legal contemplation as if it had been paid directly to him. There is some discrepancy about amounts, but this I think is explained by the condition of the books, and does not affect the fairness of the transaction. There can be no doubt that Clark has received the whole consideration for the property, and no effort has been made to prove that it was not the full value of it.

But it is said that Kramer is not a competent witness, because, as the argument supposes, if Griffith loses the property